



**NEVADA COMMISSION ON ETHICS
EXECUTIVE DIRECTOR'S REPORT AND RECOMMENDATION
REGARDING JUST AND SUFFICIENT CAUSE**

REQUEST FOR OPINION NO. 04-77

SUBJECT: LYNETTE BOGGS McDONALD
FORMER CITY COUNCILWOMAN
CITY OF LAS VEGAS

A. JURISDICTION:

Ms. Boggs McDonald is a public officer as defined by NRS 281.4365. As such, the Commission has jurisdiction over the complaint.

B. REPORT OF INVESTIGATIVE ACTIVITIES:

- Reviewed Request for Opinion 04-77 (Tab B)
- Reviewed subject's response dated January 21, 2005 (Tab C)
- Prepared timeline of events (Tab D)
- Reviewed Senate Bill 446 of the 2003 Nevada Legislature (Tab E)
- Reviewed minutes of the May 6, 2003 and May 13, 2003 meetings of the Assembly Committee on Government Affairs (Tab F)
- Interviewed State Treasurer Brian Krolicki and Assemblyman Morse Arberry
- Reviewed videotape of two newscasts from Channel 8, Las Vegas aired September 23, 2004 (see transcript, Tab G)
- Reviewed long-distance and cellular telephone records of Lynette Boggs McDonald obtained from the City of Las Vegas for the months of December, 2002, through October, 2003.

- Obtained an April 11, 2003 e-mail communication between Lynette Boggs McDonald and her then assistant, Audrey Dodge, regarding McDonald's need to speak with Assemblyman Wendell Williams (Tab H)
- Obtained a September 16, 2003 e-mail communication from Morse Arberry to Steven McDonald regarding Steven's job, which was inadvertently received by another recipient (see Tab I)
- Reviewed City of Las Vegas organizational chart (Tab J)

C. RECOMMENDATIONS:

The Executive Director hereby recommends the panel find just and sufficient cause **EXISTS** for the Commission to hold a hearing and render an opinion in this matter relating to the provisions of:

- NRS 281.481(2); and
- NRS 281.481(9).

SPECIFIC REASON:

Sufficient credible evidence exists to support a finding of just and sufficient cause for the Commission to hear the matter and render an opinion on whether the subject of the complaint violated the above provision of NRS Chapter 281.

D. SUMMARY OF REQUEST FOR OPINION:

The request for opinion alleges former City Councilwoman Lynette Boggs McDonald (hereinafter "Boggs McDonald") violated NRS 281.481(2) by using her position in government to prevent her husband, Steven McDonald, from losing his job at the State Treasurer's office. The complaint alleges that while serving on the Las Vegas City Council, Boggs McDonald attempted to influence two city employees, Wendell Williams (hereinafter "Williams") and Morse Arberry (hereinafter "Arberry"), to obstruct legislation pending in the 2003 Nevada Legislature which she believed proposed the elimination of her husband's job at the State Treasurer's office. At the time, both Williams and Arberry were members of the Nevada State Assembly, and the Nevada Legislature was in session. The request for opinion was filed October 18, 2004.

E. SUMMARY OF SUBJECT'S RESPONSE:

In her response, Boggs McDonald denies asking either Williams or Arberry, in either a private or public capacity, to intervene in any matter related to her husband's job at the State Treasurer's office. She also claims that neither Williams nor Arberry were her subordinates; rather, they both worked in the city's Neighborhood Services Department

and reported to the Director of that Department and ultimately to the City Manager, but not to Boggs McDonald nor any other member of the city council.

F. PERTINENT STATUTES AND REGULATIONS:

NRS 281.481 General requirements; exceptions. A code of ethical standards is hereby established to govern the conduct of public officers and employees:

* * * * *

2. A public officer or employee shall not use his position in government to secure or grant unwarranted privileges, preferences, exemptions or advantages for himself, any business entity in which he has a significant pecuniary interest, or any person to whom he has a commitment in a private capacity to the interests of that person. As used in this subsection:

(a) "Commitment in a private capacity to the interests of that person" has the meaning ascribed to "commitment in a private capacity to the interests of others" in subsection 8 of NRS 281.501.¹

(b) "Unwarranted" means without justification or adequate reason.

* * * * *

9. A public officer or employee shall not attempt to benefit his personal or financial interest through the influence of a subordinate.

NAC 281.189 Scope of investigation by Executive Director. The Executive Director may investigate relevant issues and facts beyond those presented in an ethics complaint in determining his written recommendation of whether just and sufficient cause exists for the Commission to render an opinion on the ethics complaint.

G. RESULTS OF INVESTIGATION:

Lynette Boggs McDonald served on the Las Vegas City Council from 1999 to 2004, at which point she was appointed to the Clark County Commission. Her husband, Steven McDonald was employed by the State of Nevada from 1999 to 2003, first as Administrator of the Unclaimed Property Division of the Department of Business &

¹ NRS 281.501(8) states: "As used in this section, "commitment in a private capacity to the interests of others" means a commitment to a person:

- (a) Who is a member of his household;
- (b) Who is related to him by blood, adoption or marriage within the third degree of consanguinity or affinity;
- (c) Who employs him or a member of his household;
- (d) With whom he has a substantial and continuing business relationship; or
- (e) Any other commitment or relationship that is substantially similar to a commitment or relationship described in this subsection."

Industry and later, as Deputy Treasurer with the State Treasurer's office responsible for unclaimed property.

Wendell Williams and Morse Arberry knew Steven McDonald and Lynette Boggs McDonald by virtue of their respective employment with the City of Las Vegas. Williams was employed by the Department of Neighborhood Services for the City of Las Vegas during the time that Boggs McDonald served as City Councilwoman. Similarly, Arberry also was employed by the Department of Neighborhood Services. At the time of the conduct in question, both Williams and Arberry also served as members of the Nevada State Assembly. However, unlike Williams, Arberry was not employed by the City of Las Vegas during the 2003 legislative session; Arberry had previously left his position with the City.

During the 2003 Nevada Legislature, Treasurer Brian Krolicki (hereinafter "Treasurer Krolicki") proposed a reorganization of the State Treasurer's office (see Tab E—SB 446). Senate Bill 446 had a hearing before the Assembly Committee on Government Affairs near the end of the 2003 legislative session. Williams and Arberry both served as members of this Committee and were in attendance at the hearing. Representatives from the Treasurer's office, including Treasurer Krolicki, testified in support of SB 446. Steven McDonald allegedly believed that his position would be eliminated as a result of the reorganization that would occur with the passage and enactment of SB 446. However, according to Treasurer Krolicki, SB 446 actually put into statute a reorganization which had already been implemented and which did not involve the elimination of Steven McDonald's position. Evidence in the record supports Treasurer Krolicki's assertion.

On September 23, 2004, roughly a year after the passage of SB 446, Channel 8 of Las Vegas aired a report featuring an interview with Williams (see transcript under Tab G). Williams states in the interview that he was repeatedly asked by Boggs McDonald to use his influence to save her husband's job by putting "heat" on the Treasurer's office. Williams was asked by Boggs McDonald to "skewer" the Treasurer's office during legislative hearings in order to save her husband's job. The report continues that Williams did as he was told by utilizing written questions prepared by Steven McDonald during the SB 446 hearings. These written questions were allegedly delivered to Williams in front of witnesses. Williams states in the interview:

"If I'm working as an employee for the City of Las Vegas and my boss, in essence, at that time Councilwoman Lynette Boggs McDonald is requesting that I ask these questions and to kill this bill to protect her husband... I mean, I'm in a position, what do I do?"

A review of the minutes from the Assembly Committee on Government Affairs, hearing SB 446, reveals that Williams conducted most of the rigorous questioning of the witnesses testifying in support of the bill.

The Channel 8 news report mentioned Assemblyman Arberry as saying he was asked to do a similar thing. The report also referenced an e-mail from Boggs McDonald to her then Executive Assistant, Audrie Dodge (hereinafter “Dodge”), directing her to contact Williams and requesting Williams’ immediate attention in contacting Steven McDonald. The Channel 8 report indicated Assemblyman Arberry was also contacted regarding the same issue.

The staff obtained a copy of e-mail correspondence dated April 11, 2003 (see Tab H) between Boggs McDonald and Dodge requesting that Dodge contact Senator Tiffany and Assemblymen Williams and Arberry. Senator Tiffany was the Chair of the Government Affairs Committee where hearings on SB 446 were held on April 7 and April 9, 2003. The staff made numerous attempts to obtain records mentioned by Williams in the televised interview from Williams through his attorney, and to procure a personal interview with Williams as well. Although Williams’ attorney advised the Executive Director that the information would be provided and an interview with Williams would be scheduled, the information was not provided to the Commission. However, the glimpse of the e-mail which was seen in the televised report leads the Executive Director to believe the e-mail Williams has is not the same e-mail staff obtained from the City of Las Vegas.

Staff interviewed Arberry, who recounted that Steven McDonald had come to him during the 2003 legislative session to lobby against SB 446. Additionally, Arberry stated that Boggs McDonald telephoned him after the adjournment of the 2003 legislative session to express her anger about the enactment of SB 446 and the reorganization of the State Treasurer’s office. She explained to Arberry that Treasurer Krolicki wanted to hire someone with less experience and less education than Steven McDonald to replace Mr. McDonald. Boggs McDonald allegedly urged Arberry to contact Treasurer Krolicki in an effort to save her husband’s job. Arberry claims to have received e-mail correspondence in the August/September, 2003 timeframe from Steven McDonald regarding his potential dismissal from the Treasurer’s office. Arberry believes he responded in September, 2003 to one of these e-mails; however, he was unaware that at the time, Steven McDonald had already been placed on administrative leave from his position with the State Treasurer’s office. Documents obtained from the Treasurer’s office show an e-mail correspondence dated September 16, 2003 from Arberry that appears to have been meant for Steven McDonald and which states in part:

“Hi Steve...Are they still trying to move you out? Please let me know how I can help so I can get on it right away.” (See Tab I).

This e-mail appears to have been inadvertently sent to Kathy Besser, Chief of Staff for the Treasurer’s office.

When interviewed, Treasurer Krolicki stated that Boggs McDonald did not contact him directly regarding Steven McDonald’s employment nor regarding SB 446. However, he specifically recalled being called into Arberry’s office for a meeting at the end of the 2003 regular legislative session (specifically on Sunday, June 1, 2003) prior to the Assembly Ways and Means Committee hearing on SB 446. Arberry was the Chairman of this Committee.

At that meeting, Assemblyman Arberry conducted a penetrating inquiry regarding SB 446. He asked Treasurer Krolicki how SB 446 would affect people that were employed by the Treasurer's office. Arberry did not specifically name any one employee, but he did state that there may have been people within the Treasurer's office with concerns about SB 446, or even those that might oppose SB 446. Treasurer Krolicki believed this employee to be Steven McDonald.

After the meeting with Chairman Arberry, Treasurer Krolicki located Kimberly McDonald (a lobbyist and the sister of Steven McDonald) in the Legislative Building, and requested and received a cellular phone number for Steven McDonald. Treasurer Krolicki was able to contact Steven McDonald on his cellular phone, and made it very clear to Steven McDonald that he believed this reorganization was very important to the entire office and that he hoped Steven agreed. He requested that Steven McDonald immediately call Chairman Arberry to convey his concurrence. SB 446 was heard and successfully passed out of the Assembly Ways & Means Committee within hours of these conversations.

H. ANALYSIS

Allegations regarding NRS 281.481(2):

The Commission has determined in prior opinions² that, for a violation of NRS 281.481(2) to occur, a preponderance of the evidence must indicate the public officer intended to secure or grant a benefit by using his position in government. (Panel proceedings are required only to find sufficient credible evidence of a potential violation of statute.)

In *Matter of William Barrett*, NCOE Opinion No. 01-08A, the Commission applied a two-prong test to determine whether the public officer violated NRS 281.481(2). Under this test, the Commission must first determine whether the public officer's conduct benefited some person or business entity. Second, the Commission must determine whether the public officer intended³ such conduct to so benefit the person or business entity.

Utilizing this two-prong test, the evidentiary record regarding this request for opinion contains sufficient credible evidence Boggs McDonald intended for her husband Steven McDonald to benefit from her conduct. Williams stated in the Channel 8 interview he was asked repeatedly by Boggs McDonald to use his influence to save her husband's job by putting "heat" on the Treasurer's office. Williams was asked to "skewer" the Treasurer's office during legislative hearings in order to save Steven McDonald's job, and was provided with written questions to accomplish this. The minutes from the Assembly Committee on Government Affairs corroborate this claim.

² See, *Matter of Douglas E. Glenn*, NCOE Opinion No. 01-15; *Matter of Michael Montandon*, NCOE Opinion No. 01-11; *Matter of William Barrett*, NCOE Opinion No. 01-08A.

³ "A public officer or employee shall not **use** his position in government..." (Emphasis added). NRS 281.481(2).

Secondly, Arberry asserts Boggs McDonald telephoned him after the adjournment of the 2003 legislative session to express her anger about the enactment of SB 446 and to urge Arberry to contact Treasurer Krolicki in order to save her husband's job. The e-mail sent by Arberry to Steven McDonald at the Treasurer's office asking whether the Treasurer's office was "still trying to move [him] out" corroborates the idea that Arberry was requested to intervene.

The overt act of a city councilman contacting two legislators, one a current employee and one a former employee of the City of Las Vegas, in order to secure their support to preserve her own husband's employment appears to be an explicit attempt to use one's public office to secure an unwarranted privilege, preference, exemption, or advantage for both her husband and herself – by virtue of the pecuniary interest Steven McDonald's salary contributed to the McDonald household. Granted Steven McDonald, as an individual and member of the general public (outside of his then public employment) may contact any member of the Assembly regarding pending legislative matters without necessarily implicating an ethics violation as it relates to NRS Chapter 281. In fact, Arberry claims that Steven McDonald had come to him during the 2003 legislative session to lobby against SB 446. Further, Arberry claims to have received e-mail correspondence in the August/September, 2003 timeframe from Steven McDonald regarding his potential dismissal from the Treasurer's office. However, it is the contact between Boggs McDonald and Williams and Boggs McDonald and Arberry asking them to contact her husband with regard to saving his job, in concert with Steven McDonald's actions thereafter, that best illustrate how Steven McDonald was intended to benefit from Boggs McDonald's conduct. It is likely that if Boggs McDonald was not a member of the Las Vegas City Council, Steven McDonald would not have had the opportunity to potentially benefit from having Williams lead the questioning of the Treasurer's office regarding SB 446 based on questions Steven McDonald wrote. Moreover, Steven McDonald may not have had the opportunity for a sitting legislator and committee chairman (Arberry) to summon Treasurer Krolicki to the legislator's office in order to inquire more about the reorganization and its effect on existing employees of the Treasurer's office.

As to the second prong of the test, evidence contained in the record suggests that Boggs McDonald "intended" to secure or grant her husband a benefit vis-à-vis saving his job by using her influence and position as Councilwoman. Moreover, it appears her loyalty to her husband motivated her to advocate, lobby, and attempt to influence two members of the Assembly to depart from the faithful and impartial discharge of their public duties.

E-mail correspondence supports the assertion that Boggs McDonald had her executive assistant contact Williams and Arberry, both members of the Assembly Committee on Government Affairs. The e-mail correspondence between Boggs McDonald and her assistant took place during the time frame in which SB 446 was being considered by that Committee. Further, Williams and Arberry both claim Boggs McDonald contacted them and asked them to save her husband's job. Phone records obtained from the City of Las Vegas establish Boggs McDonald telephoned Williams for 13.7 minutes on September 3,

2003, the same day that her husband was placed on administrative leave from the Treasurer's office. (Steven McDonald was subsequently terminated from his position with the Treasurer's office on October 1, 2003.) Arberry also recalls Boggs McDonald telephoning him after the adjournment of the 2003 legislative session and urging Arberry to help save Steven McDonald's job.

Based on the above investigative activities and analysis, the Executive Director believes sufficient credible evidence exists for the panel to recommend the full Commission hold a hearing and render an opinion regarding whether Boggs McDonald violated NRS 281.481(2). Only the full commission has the authority to determine if the conduct of Boggs McDonald in relation to these issues rises to the level of a violation of state law.

Consideration of NRS 281.481(9):

In addition to the above allegations, under NAC 281.189 the Executive Director may investigate relevant issues and facts beyond those presented in an ethics complaint in determining her written recommendation of whether just and sufficient cause exists for the Commission to render an opinion on the ethics complaint.

NRS 281.481(9) provides:

“A public officer or employee shall not attempt to benefit his personal or financial interest through the influence of a subordinate.”

The Commission found a willful violation of NRS 281.481(9) where a public employee used her position in government to benefit her husband.⁴ In *Matter of Jennifer Galentine*, NCOE Opinion No. 98-11, a public employee used her authority over a subordinate to attempt to coerce him into hiring an individual in order to create an opening at another agency into which her husband could be placed. The opinion states:

“In view of the circumstances, the timing, Ms. Galentine's reputation among her employees, her obvious and understandable desperation created by her husband's protracted unemployment, and her credibility and demeanor at hearing, we conclude that Ms. Galentine intended Mr. Day to receive precisely the message that Mr. Day did receive; namely, that she wanted Mr. Day to recommend Mr. Sweetland for the clerk position to create an opening at NDOT for which her husband would be qualified.”

Similarly, the evidentiary record in this request for opinion appears to implicate a desperation on the part of Boggs McDonald as it relates to the preservation of her husband's employment. Considering the circumstances, the timing, and the evidence gathered thus far, the panel should consider adding to the complaint a potential violation of NRS 281.481(9).

Boggs McDonald contacted two Assemblymen that were members of the Committee hearing a legislative bill that she believed concerned the possible elimination of her

⁴ *Matter of Jennifer Galentine*, NCOE Opinion No. 98-11.

husband's employment. Coincidentally, the two Assemblymen (out of 42 total members of the Assembly) also happened to be employees or former employees of the City of Las Vegas. Boggs McDonald asked the Assemblymen to help quash the bill. At the time Assemblyman Williams, in particular, happened to work for the City of Las Vegas Department of Neighborhood Services. Boggs McDonald makes the argument that Williams is not her subordinate. Rather, he ultimately reports to the City Manager through the Director of the Department of Neighborhood Services, not the Mayor nor any member of the Las Vegas City Council (see organizational chart under Tab J). Factually, this cannot be disputed. Yet, this can also be seen from a different perspective – that of the employee who felt pressured by the councilwoman. However removed Boggs McDonald may believe City Council is from the employees of various city departments, the fact remains that Williams felt that Boggs McDonald had power over him as it relates to his employment and that she asserted this power by asking that he help save her husband's job. In his Channel 8 interview, Williams states:

“If I'm working as an employee for the City of Las Vegas and my boss, in essence, at that time Councilwoman Lynette Boggs McDonald is requesting that I ask these questions and to kill this bill to protect her husband... I mean, I'm in a position, what do I do?”

Ultimately, all personnel actions against city personnel are subject to appeal up through the chain of command to the City Manager. The City Manager serves at the pleasure of the Las Vegas City Council. As a member of the City Council, Boggs McDonald was in the unique position of having influence regarding the actions of the City Manager, as well as the continued employment of the City Manager. Assemblyman Williams, as an employee of the City of Las Vegas, clearly understood the reporting relationship and chain of command. However, as an elected legislator of many years, he also understood both politics and politics within the City of Las Vegas well. It seems doubtful he would misinterpret the political nature of Boggs McDonald's request. He also clearly saw himself, as a city employee, in a subordinate relationship to the City Council, and felt his subordinate relationship placed him in a position to do as requested and which the evidentiary record reflects he did. This lends credibility to a potential violation potential violation of NRS 281.481(9).

Based on the above investigative activities and analysis, the Executive Director believes sufficient credible evidence exists for the panel to recommend the full Commission hold a hearing and render an opinion regarding whether Boggs McDonald violated NRS 281.481(9). Only the full commission has the authority to determine if the conduct of Boggs McDonald in relation to these issues rises to the level of a violation of state law.

I. CONCLUSION:

The Executive Director hereby recommends the panel find just and sufficient cause exists for the Commission to hold a hearing and render an opinion regarding whether the subject violated NRS 281.481(2) and NRS 281.481(9).

DATED: September 16, 2005

Stacy M. Jennings
STACY M. JENNINGS, MPA
EXECUTIVE DIRECTOR